

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **SENATOR SHERM ANDERSON**, on March 25, 2003 at 9 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Mike Sprague, Vice Chairman (R)
Sen. Sherm Anderson (R)
Sen. Vicki Cocchiarella (D)
Sen. Kelly Gebhardt (R)
Sen. Ken (Kim) Hansen (D)
Sen. Sam Kitzenberg (R)
Sen. Glenn Roush (D)

Members Excused: Sen. Bob Keenan (R)
Sen. Dale Mahlum, Chairman (R)
Sen. Don Ryan (D)
Sen. Carolyn Squires (D)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Sherrie Handel, Committee Secretary
Eddye McClure, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 555, 2/24/2003; HB 577,
2/24/2003; HB 588, 2/28/2003; HB
667, 3/17/2003
Executive Action: HB 555, HB 588, HB 385, HB 482

HEARING ON HB 555

Sponsor: REPRESENTATIVE ROD BITNEY

Proponents: Jerry Loendorf, Montana Consumer Finance
Association

Opponents: NONE

Informational Witnesses: NONE

Opening Statement by Sponsor:

REPRESENTATIVE ROD BITNEY, HD 77, KALISPELL, stated this bill revises the amount charged for past due consumer loan payments. It changes the amount from five percent (5%) of the amount past due to the greater of five percent (5%) of the amount past due or \$15. He stated it would bring Montana more in line with surrounding states.

Proponents' Testimony:

Jerry Loendorf, Montana Consumer Finance Association, explained how the bill would work and provided written documentation **EXHIBIT (bus63a01)**. He said the greatest change is charges will never be less than \$15 which creates uniformity with other states.

Questions from Committee Members and Responses: None

There were no questions posed by Committee members on this bill.

Closing by Sponsor:

REP. BITNEY asked for a favorable consideration of the bill.

{Tape: 1; Side: A; Counter: 4.3}

HEARING ON HB 577

Sponsor: REPRESENTATIVE JOHN BRUEGGEMAN

Proponents: **Dick Brown, Montana Health Care Providers (MHCP)**
 Angela Huschka, Deputy Insurance Commissioner,
 State Auditor's Office

Opponents: **Larry Jones, Liberty Northwestern Insurance**
 Jacqueline Lenmark, American Insurance
 Association
 Greg Van Horssen, State Farm Insurance

Informational Witnesses: **Jerry Keck, Department of Labor and**
 Industry (DLI)

Opening Statement by Sponsor:

REPRESENTATIVE JOHN BRUEGGEMAN, HD 74, Polson, said this bill will allow three or more employers with 500 or more employees the opportunity to organize as a domestic reciprocal insurer for the purpose of providing workers' compensation coverage for their employees. He said there are currently no domestic reciprocal insurers in the state. Montana Health Care Providers is interested in amending this section of law to provide their employees with a reciprocal. He said the advantage of a reciprocal insurance is the potential elimination of federal income tax liability. He said conversion to a reciprocal would also allow **MHA's** workers' compensation trust to possibly eliminate subscriber contingent liability if losses occur. He stated the reciprocal would be subject to a premium tax and would be regulated by the insurance division of the state auditor's office. He said **MHA** would be able to provide better dividends to their employees because of the reciprocal. He said it is also a better benefit for the state when it comes to the general fund.

Proponents' Testimony:

Dick Brown, Montana Health Care Providers, provided written testimony **EXHIBIT (bus63a02)** .

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Angela Huschka, Deputy Insurance Commissioner, State Auditor's Office, stated her agency is in support of **HB 577**. She explained the office studied surrounding states to see what is being

offered in reciprocals, noting seven states have the same requirements as Montana and four states have no requirements. She said this change would enable three employers who have more than 500 employees to form a domestic reciprocal insurer. She said one question was if the reciprocal would be mandatory to be a part of the guaranty association. She said this association is set up in case of insolvencies, etc. She discussed what other states have done concerning insolvencies, and indicated there has never been a reciprocal where guaranty funds had to be accessed. She said a reciprocal is another form of an insurer like a mutual or a stock company. She said the requirement for a mutual is ten or more persons have to incorporate, and five or more have to incorporate for a stock company. She said this is another type of corporate charter for people who want to form an insurance company. She said the state auditor's office would review an application for a reciprocal insurance just as they do other insurance companies in Montana. She stated they would look at the corporate structure, financial statements, business plan, etc.

Opponents' Testimony:

Larry Jones, Liberty Northwestern Insurance, said they oppose the reference to the Montana Insurance Guaranty Association. He said if a private carrier becomes insolvent then other private carriers have to pay into the guaranty association to bail them out. He said this type of reciprocal, as a member of the guaranty association, would require that other carriers would have to stand in their shoes if they fail to pay workers' compensation claims. He discussed the reciprocal statute. He said the real concern here is financial solvency, no joint liability, and their responsibility for having to step in a pay claims, etc. He said the self-insured workers' compensation program is a stand-alone program and they have a much more stringent financial solvency. He felt reciprocals should also have their own guaranty associations.

Jacqueline Lenmark, American Insurance Association, stood in opposition to **HB 577**. She said their concern is with the guaranty association and they would oppose any weakening of the current statutes to form a reciprocal. She used the example of three companies that could form a reciprocal; Touch America, Enron, and Global Crossing. Those companies could jeopardize the other members of the guaranty association and also have limited

responsibility for covering the claims. She said this bill proposes that a reciprocal can become a member of the association and all of the other members be assessed for their liability if that company becomes insolvent. She felt that a company that only writes one type of insurance and is only formed out of three companies sends a very negative message to the insurance market and will have an effect on private insurance carriers who are looking to sell insurance in Montana.

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Greg Van Horssen, State Farm Insurance, rose in opposition of this bill.

Informational Witness Testimony:

Jerry Keck, Department of Labor and Industry, said they control the regulatory function of workers' compensation and was available to answer any questions.

Questions from Committee Members and Responses:

SENATOR KELLY GEBHARDT, asked **Ms. Huschka** why the bill is here, and if twenty-five or more people can do it, why are they changing it to three companies with 500 employees. **Ms. Huschka** said it would be three employers and they looked at this mostly to meet **MHA's** needs. **SEN. GEBHARDT** said if there were thirteen hospitals interested would they be considered an employer or an individual. **Ms. Huschka** said the Hospital Association felt they needed twenty-five hospitals in order to form a reciprocal.

SENATOR VICKI COCCHIARELLA asked if **MHA** was self-insured. **Mr. Brown** said that was correct. **SEN. COCCHIARELLA** asked if this bill allowed them to become a reciprocal would they have to pay federal tax on the premiums. **Mr. Brown** said **MHA** is a taxable non-profit organization. He said they would be taxed above and beyond any thing that was required of them. He said a few years ago they spent more than \$20,000 in taxes and this is very difficult for non-profit hospitals. He said if they collected 100% of their premiums every year they would collect over \$4 million. He said they have been waiving fourth quarter premiums for all but two years of their trust. He said if they collect the fourth quarter premium it is all taxed by the federal

government and that is what they are trying to avoid by becoming a reciprocal. He said then they could pay the state the premium tax and rebate back to their members a dividend.

SEN. COCCHIARELLA asked how do reciprocals work and why are they not jointly liable. **Ms. Lenmark** said they are separately liable and she did not know why it was set up this way. She said there are two different methods involved to access their members and perhaps this is why it is a separate liability. **Ms. Huschka** felt it was a legal matter but she did not know for sure.

SEN. COCCHIARELLA said this is a huge concern and she would like some answers because the guaranty fund is very important. **Mr. Brown** felt it was the structure of reciprocals and he felt there were other private entities that fit that same description and is covered under the same statute.

SEN. COCCHIARELLA asked what was the difference between a captive and a reciprocal. **Ms. Lenmark** said under Montana law the reciprocal is regulated more similarly to insurance code. She stated a captive is not regulated under the insurance code under the same manner and is exempt from many of the things under the insurance code. She said a captive is a company that has been created to form and insure its' employees and its' risks through its own insurance company.

SEN. GEBHARDT asked if this joint several liability issue were figured out would that take care of their concerns. **Mr. Jones** said yes.

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SEN. GEBHARDT asked how should they apply the joint several liability to this bill. **Mr. Jones** said self-insurers have their own guaranty association and it could be structured similar to this.

SEN. GEBHARDT asked **Mr. Brown** if he was agreeable to that. **Mr. Brown** said he would have to look and see if it would fit because he did not know if the joint several liability issue would have to go through statute.

{Tape: 2; Side: A; Counter: 1.1}

SEN. COCCHIARELLA asked about the guaranty fund. **Ms. Lenmark** said this bill draws in another entity and is a reciprocal insurer for the purposes of writing workers' compensation. She said if the Committee is going to consider a different kind of guaranty fund that needs to be considered carefully so that a company is not drawn in like Farmer's Insurance who is writing all lines of insurance. She felt there is a conflict in the bill in 33-5-501, as it talks about the insuring power of the reciprocal. She stated in that section it says they can enter into any kind of insurance defined by this code and this may restrict this particular formation to workers' compensation and there may be a conflict in the act.

SENATOR SHERM ANDERSON asked if **MLE**, the last reciprocal in the state, was a part of the guaranty fund. **Mr. Jones** said he did not know. **Ms. Husckha** said yes. **SEN. ANDERSEN** said in prior history he felt the Auditor's Office was not in favor of reciprocals. **Ms. Huschka** said she was not sure what position the Auditor's Office has taken in the past. She said there are very few reciprocals in other states and it is not a common entity. **SEN. ANDERSON** said when they formed the reciprocal for **MLE** it was during the transition of changing auditors and the auditor approved it. He said when the new auditor, **Mark O'Keefe**, came in he tried to stop it but was unable to since it had already been approved. He said there have not been any reciprocals since.

Closing by Sponsor:

REP. BRUEGGEMAN expressed his thoughts that this is a simple bill except for the one issue on the table and that is joint liability. He said he would check with counsel and get back to the Committee concerning this issue. He said the Montana Hospital Association is self-insured and has been solvent for the entire period. He said they are one of the largest employers in Montana and are a benefit for employees in every community in the state. He felt reciprocals provide a better structure so they can manage their business in the best way possible.

HEARING ON HB 588

Sponsor: **REPRESENTATIVE GARY MATTHEWS**

Proponents: **Greg Van Horssen, State Farm Insurance**
 Jacqueline Lenmark, American Insurance Association
 Angela Huschka, Deputy Insurance Commissioner,
 State Auditor's Office

Opponents: **NONE**

Informational Witnesses: **NONE**

Opening Statement by Sponsor:

REPRESENTATIVE GARY MATTHEWS, HD 4, Miles City, shared that this bill deals with property and casualty insurance. He said right now Montana law says insurance rates are filed with the Insurance Commissioner to insure that these rates are fair. He said currently Montana law is not flexible if those premiums need to be changed because of a change in risk, etc. He said new Section 2 was taken from Colorado law.

Proponents' Testimony:

Greg Van Horssen, state Farm Insurance, gave a little bit of history and said in 1997 **State Farm** wanted to provide discounts for student rates, good driver rates, multi-car discounts, etc. He said at that time there was a technicality in the law that prohibited discounts. He said they now have the same thing but in reverse. He said in May 2001, one of their customers bought several lines of insurance and immediately qualified for a multi-line discount and as soon as the insurance was in place he cancelled all but one line of the insurance. **State Farm** then had to tell the client that he did not qualify for the multi-line discount and there was a complaint made and they were contacted by the Commissioner's office and there was a discussion about this. He said the law in Montana, and the purpose of Section 33-15-1101, which deals with premium changes, provides in part the prohibiting of midterm increases in premiums. He said there are legitimate times when midterm premium increases should take place. He said when an individual requests more coverage or there is an add on of a building or increase of business property, etc., this can mean an increase in premiums in the midterm. He said they agreed to use language from the Colorado law and because it was adequate in meeting the concerns of the Department and insurance companies. He said it does allow for

midterm increases under certain limited restrictions and will allow the insurance company to make those increases. He said it is a practical change to the law.

{Tape: 2; Side: A; Counter: 1.1}

Jacqueline Lenmark, American Insurance Association, added their support to the bill.

Angela Huschka, State Auditor's Office, reiterated what had been said by **Mr. Van Horssen** and explained they have worked with **State Farm** on this issue since May 2001. She said they suggested using the Colorado statute as it met the needs of the Department and insurance companies the best. She said they have agreed to work on this with the industry for two years to see how it will work for consumers.

Questions from Committee Members and Responses:

SEN. COCCHIARELLA said she was in the middle of discussing her credit score with her insurance company and she is challenging that credit score, etc. She said if she is able to resolve this dispute and her credit score is changed would this bill allow her insurance company to rebate her based on the credit score that is inaccurate. **Mr. Van Horssen** said they discussed this in the House. He said these companies already do this type of thing when there is a change in the risk that would dictate a lower premium. He said if the premium decrease was large enough **State Farm** would send a check or if it was a smaller deduction it would be credited over the next cycle.

Closing by Sponsor:

REP. MATTHEWS shared the insurance people worked hard on this issue and urged support.

{Tape: 1; Side: B; Counter: 6.8}

EXECUTIVE ACTION ON HB 555

Motion/Vote: SEN. COCCHIARELLA moved that HB 555 BE CONCURRED IN. Motion carried 8-0. SENATOR KELLY GEBHARDT WILL CARRY THE BILL.

EXECUTIVE ACTION ON HB 588

Motion/Vote: SEN. COCCHIARELLA moved that HB 588 BE CONCURRED IN. Motion carried 8-0. SENATOR VICKI COCCHIARELLA WILL CARRY THE BILL.

HEARING ON HB 667

Sponsor: REPRESENTATIVE CHRISTOPHER HARRIS

Proponents: NONE

Opponents: NONE

Informational Witnesses: Brenda Elias-Thompson, State Auditor's Office

Opening Statement by Sponsor:

REPRESENTATIVE CHRISTOPHER HARRIS, HD 30, Bozeman, said this bill deals with a provision that needs to be fixed, because it does not cover Ponzi schemes. The definition of a Ponzi scheme is found on page four of the bill. He read the language in this section that discusses Ponzi and pyramid schemes. He said a Ponzi scheme will always collapse because there will never be enough investors to make it successful. He said Ponzi schemes still exist especially during recessions and the Ponzi scheme operators tend to go after the most vulnerable especially the elderly. He said there have been Ponzi schemes in Montana and he discussed those schemes. He said this bill also has the increase of criminal penalties in fines of \$100,000 and is on page five of the bill. He said the auditor's office would like to retain a civil penalty provision and an amendment is being drafted for that. He said this would make the provision clear that there is a criminal and civil penalty.

Informational Witness Testimony:

Brenda Elias-Thompson, State Auditor's Office, said they are interested in having the bill amended so they do retain their ability to go after Ponzi schemes administratively. She said currently the auditor's office has the authority to pursue Ponzi schemes pursuant to their security provision. She said the bill was amended in the House and they were concerned that this would limit their ability to go after Ponzi schemes administratively. She said with the proposed amendments they would be able to go after a violation of 30-10-324 and they would be able to assess a fine of not more than \$10,000. She said the current bill does increase the fines but only for criminal violations.

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Questions from Committee Members and Responses:

SEN. COCCHIARELLA requested that **REP. HARRIS** explain the background of Ponzi schemes. **REP. HARRIS** said Mr. Ponzi was an Italian immigrant who came to the United States and after several unsuccessful enterprises he hit on a scheme in which the exchange rate could be used for stamps and was called stamp coupons. He said by exchanging Italian stamp coupons for American stamps the exchange rate was favorable and he formed a corporation around that idea. He said Mr. Ponzi sold shares in his corporation even though there was nothing really going on. He said after several years he was finally caught and put in prison. **SEN. COCCHIARELLA** asked on page five, section 2, the words purposely and knowingly were omitted and why. **REP. HARRIS** said they do need intent and the current law does not really have one. He said they took it out and put it in line 9 so that anyone who willfully violates would be under the criminal provision and would not need to be there for the civil provision.

SENATOR KEN HANSEN asked **Ms. Elias-Thompson** how many Ponzi schemes there have been in Montana. **Ms. Elias-Thompson** said that is very difficult to tell. She said currently they do have a situation of this nature that their agency is looking into. She said in times of economic stress these schemes seem to pop up more and more.

Closing by Sponsor:

REP. HARRIS closed by stating they would be offering an amendment which would create a bill with very good criminal and civil provisions and a definition of a Ponzi scheme.

EXECUTIVE ACTION ON HB 385

Motion: SEN. COCCHIARELLA moved that HB 385 BE CONCURRED IN.

Discussion:

Eddye McClure, Legislative Staffer, explained the amendments to the committee (HB038501.aem) **EXHIBIT (bus63a03)**.

Vote: Motion carried 9-0.

Motion: SEN. COCCHIARELLA moved that HB 385 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. ROUSH asked if this bill deals specifically with new vehicles.

Eddye McClure said yes.

Vote: Motion carried 9-0.

EXECUTIVE ACTION ON HB 482

Motion: SEN. MAHLUM moved that HB 482 BE CONCURRED IN.

Discussion:

CHAIRMAN DALE MAHLUM told the committee he talked to **Carl Schweitzer, American Sub-Contractors Association of Montana**, who asked that an amendment not be put on the bill regarding a third party.

SEN. COCCHIARELLA expressed concern about how insurance can be obtained when there is a third-party issue.

Vote: Motion that HB 482 BE CONCURRED IN carried 5-4; with **SENS. COCCHIARELLA, KITZENBERG, ROUSH, and SQUIRES** voting NO.

ADJOURNMENT

Adjournment: 11 A.M.

SEN. SHERM ANDERSON

SHERRIE HANDEL, Secretary

DM/SH

EXHIBIT (bus63aad)